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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: APR 30 2002

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Los Angeles, California district office denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the petition will be approved.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) with the director on September 29, 1997. The petitioner is a 54-year-old married citizen of the United States. The beneficiary is 17 years old at the present time and was born in India on June 10, 1984.

The director denied the petition because the petitioner failed to establish that the beneficiary met the definition of an orphan according to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act).

On appeal, counsel submits a brief.

Section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

In a February 13, 1998 Notice of Intent to Deny, the director informed the petitioner that the I-600 petition could not be approved. According to the director, even though the petitioner had established that the biological mother was a surviving parent, the petitioner had failed to show that the biological mother was unable to provide for the beneficiary's care according to the local standards in India. While the petitioner had submitted several affidavits from individuals who were familiar with the biological mother's circumstances, the director concluded that affidavits, in general, were not considered sufficient evidence of a parent's inability to provide for a child's proper care.

In response, the petitioner's counsel stated that the director should not discount affidavits that are submitted to show that the biological mother cannot provide for a child's care. Counsel noted that the petitioner had already submitted affidavits from the biological mother, the biological mother's sister, and a member of the Legislative Assembly in India about the biological mother's inability to care for the beneficiary. Counsel also

stated that he was submitting a letter from the Secretary of the Indian Council of Social Welfare, noting that this agency was the "most competent authority available to attest to such facts based on local standards."

The director denied the petition on March 25, 1999 for the reasons stated in the Notice of Intent to Deny. In particular, the director stated that:

The petitioner submitted affidavit statements from the natural mother and various family members & friends, stating the mother is incapable of providing proper care for the child. As stated in the letter dated May 21, 1997, and in the Notice of Intent to Deny, affidavit statements are, in general, not considered sufficient evidence to establish the surviving parent's ability to provide proper care for a child. The petitioner has not entered any solid evidence to explain and substantiate the asserted inability. The child study report by the Indian Council of Social Welfare, submitted with counsel's Rebuttal to the Intent to Deny, merely states that the natural mother has become financially, physically, and mentally incapable to provide for the child as a result of her husband's sudden death. There was no discussion of the daily living conditions of the mother and child. The report did not offer convincing facts and information to establish the mother's dire circumstances of poverty and destitution.

On appeal, the petitioner reiterates that the director should have considered the evidence of the biological mother's inability to care for the beneficiary that was contained in the affidavits and letters from various parties. The petitioner also submits additional evidence, which includes affidavits from two new parties, a court order for the beneficiary's adoption by the petitioner and his spouse, and a new affidavit from the biological mother.

As the record is presently constituted, the petitioner has met his burden of establishing that the biological mother is unable to provide for the beneficiary's proper care according to the local standards in India.

The record contains the death certificate of the biological father who died in 1993. Therefore, upon the biological father's death, the biological mother became a surviving parent. 8 C.F.R. 204.3(b) states, in pertinent part:

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section

101(b)(2) of the Act. In all cases, a surviving parent must be incapable of providing proper care as that term is defined in this section.

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.

In support of his claim that the biological mother became unable to care for the beneficiary after the death of the biological father, the petitioner submitted affidavits from various family acquaintances. Each individual attested to the death of the biological father and the biological mother's inability to raise the beneficiary on her own. The director did not give any weight to the affidavits, citing that affidavits, in general, are not sufficient evidence of a parent's inability to provide proper care for a child.

Information contained in an affidavit should not be disregarded simply because it appears to be hearsay or self-serving. In administrative proceedings that fact merely affects the weight to be afforded such evidence, not its admissibility. Matter of Kwan, 14 I&N Dec. 175, 177 (BIA 1972). Here, the weight to afford the affiants' statements should be determined by other relevant evidence in the record regarding the biological mother's ability to care for the beneficiary.¹

The record contains a June 3, 1998 letter from the Secretary of the Indian Council of Social Welfare. The Secretary states that a social worker visited the home of the biological mother and concluded that "[the biological mother] is quite incapable of providing for [the beneficiary's] basic needs of physical and mental growth." The record also contains a July 26, 1999 *Comprise Decree* from the Court of the City Civil Judge at Ahmedabad in which the judge decreed that "the plaintiff (biological mother) [is] enable [sic] to provide proper care for the minor child . . . and irrevocably released her son for immigration and adoption."

The biological mother and several family friends claim in their affidavits that the biological mother has been unable to provide sufficient care for the beneficiary since the death of the beneficiary's father. While the director may believe that such claims are either self-serving or hearsay, the claims have been supported by both a social worker and a civil court judge. The affidavits cannot be dismissed as unreliable or insufficient and should be given considerable weight.

¹ Relevant evidence may be defined as any evidence tending to prove or disprove a matter in issue. BLACK'S LAW DICTIONARY 579 (7th ed. 1999) (citing Fed. R. Evid. 401-403).

Accordingly, the petitioner has established that the beneficiary is eligible for classification as an orphan because he is the child of a surviving parent, who is incapable of providing for his care and has irrevocably released him for emigration and adoption. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The director's March 25, 1999 decision is withdrawn and the petition is approved.